

E. Submission of a Complaint to the Procuracy or to an Executive Body

1. Complaint to the Procurator

Chapter 1's discussion of the Procuracy and of executive bodies responsible for enforcement of particular laws noted that the procuracy may be a source of legal assistance with some disputes, as may some executive bodies for disputes within their areas of responsibility.

The procuracy has no capacity to intervene in or resolve disputes between private parties. However, its supervision powers over state bodies of various kinds make it an alternative avenue for complaints concerning improper or illegal actions of those bodies. The submission of a protest by the procurator requires the body involved to make a specific answer to the procurator within a limited period, either stating the measures it has taken to rectify the problem or stating its reasons for disagreement with the procurator's conclusion about improper activities. The procurator also has the authority to conduct a "verification" of the observance of legality by bodies falling within its supervision powers, including demand for documents or explanations or physical inspection of its premises. This authority may give a procurator convinced by the complaint received the ability to obtain evidence of a violation that would be difficult for a party to obtain on its own

The procurator's authorities go to the observance of the laws by the bodies under its supervision. In practice, this means that the procurator will be more interested in complaints concerning clear and convincing violations of a plain rule than in complaints

which rest on a dispute with the relevant body about the proper interpretation of particular part of a law. The procurator has no authority to interpret the laws, and disputes concerning proper application and interpretation of the laws where no clear rule has been established belong in a court rather than the procurator's office.

There is no specified form for a complaint to the procurator's office. For reasons of efficiency and clarity, a written statement containing copies of necessary documents and evidence of the improper acts is desirable.

2. Complaint to Other State Bodies

Some state bodies enforcing the law in a particular sphere are also alternative sources for assistance in the resolution of disputes. One example of such a body is the Ministry for Antimonopoly Policy, which takes complaints from citizens and legal entities in the areas of competition law (abuse of a dominant position, restrictive agreements, and so forth), advertising law (false claims, commercial defamation) and consumer protection law. A number of types of common commercial disputes may fall within its jurisdiction. Another example is the Federal Commission on the Securities Market, which may address some complaints concerning shareholders rights or corporate governance. Other bodies will also take complaints from citizens or entities for investigation, where the complaint concerns their areas of responsibility.

The procedure for submission of a complaint to various state bodies is defined by each of the relevant bodies, but it is generally quite informal, and sometimes an investigation can be initiated on the basis of orally provided information. Because many of the bodies involved have a positive duty to enforce the law, rather than a function as a "neutral" body for dispute resolution, they often must respond to indications that the relevant law is being violated. Like the procuracy, they may have investigative authority in their areas of expertise that substantially exceeds that of a private party, which may be of assistance in proving a claim when necessary evidence is not in the control of the complaining entity. In some cases, the enforcement body has the authority to impose fines and to issue mandatory order concerning the behavior of a recipient (cease and desist orders, restoration of the status quo ante) or to suspend or withdraw licenses or permissions to carry out particular activities. Such bodies do not, however, have the power to award damages directly to a private party injured by the illegal behavior. In such cases, the private party may need to file suit in the relevant court to receive compensation. The pursuit of the complaint before the executive body may be of assistance as an evidentiary matter or to gain the support of the body (or its intervention as a third party, if it has the right) in the case.

JURISDICTION OF THE COURTS - EXAMPLES

1. A registered individual entrepreneur wishes to file suit against a state body supervising traffic on the automobile roads to contest penalties imposed on him for violation of traffic rules while he was delivering products to a customer with his truck.

The case is not subject to the jurisdiction of the arbitrazh courts, since the fine was imposed on the individual entrepreneur for a violation in personal conduct, not in relation to business activity. The parties meet the general requirement for status, but not the requirement for subject matter. The case is within the jurisdiction of the general courts.

2. An individual entrepreneur wishes to file suit against a state body supervising freight transport to contest its confiscation of cargo from his trucks due to irregularities in the shipping documents.

The case is subject to the jurisdiction of the arbitrazh court, as it meets both party status and subject matter requirements.

3. A legal entity wishes to file suit against a state licensing body to contest its decision refusing to issue a license, on the grounds that the licensing body incorrectly applied the law.

The case is subject to the jurisdiction of the arbitrazh courts, as it meets both party and subject matters requirements.

4. A legal entity wishes to file suit requesting that a licensing law be held to be generally without effect. The licensing body refused to issue the license on the basis of a general law issued by the relevant subject of the Federation which does not permit the issuance of such licenses to legal entities organized as partnerships. The legal entity is a partnership, and believes that the licensing body correctly interpreted and applied the general law as written. However, the legal entity believes that the law is itself invalid, because it violates federal legislation on licensing. The legal entity wants a court to find the law itself void.

The case is not subject to the jurisdiction of the arbitrazh courts. Although the parties and the subject matter meet the general requirements, the plaintiff in this case is challenging the validity of a law that is generally applicable to all partnerships — that is, a normative legal act. The arbitrazh courts consider such cases only in relation to non-normative acts, or where the review of such acts is directly assigned to them by statute. Proper jurisdiction for the case depends upon the plaintiff's reasons for challenging the act. If the plaintiff believes that the law is not consistent with federal law, the case is subject to the jurisdiction of the general courts. If the plaintiff believes that it is unconstitutional on its face, the case is subject to the jurisdiction of the Constitutional Court.